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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2007

CORAM :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.47 of 2004

M/s.Pyramid Films International,
7, West Road, West CIT Nagar,
Chennai-35, now at
3B, III Floor, Royal Court,
44, Venkatanarayana Road,
T.Nagar, Chennai-17. .. Appellant

Vs.

The Deputy Commissioner of Income-tax,
City Circle V (Inv),
121, Nungambakkam High Road,
Chennai-34. .. Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'A', Madras in IT(SS)A No.52(Mds)/2002 dated 09.06.2003 for the block period 01.04.1987 to 17.03.1997 against the order of the Commissioner of Income Tax (Appeals) VI dated 06.02.2002 made in ITA.No.362/2001-02/VI and GI.No./PA.No.2304P years of Assessment year Block Period (01.04.87 to 17.03.97) against the order of the Deputy Commissioner of Income Tax City Circle V(Inv)(2) Chennai dated of order 29.09.2000 made in PA.No./GIR.No.2304P Assessment year Block Period ended on 17.03.97.

For Appellant : Mr.V.Ramachandran,
Senior Counsel for
Mrs.Anitha Sumanth

For Respondent : Mrs.Pushya Sitaraman,
Sr.Standing Counsel for
Income-tax Department

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JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the assessee, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'A', Madras in IT(SS)A No.52(Mds)/2002 dated 09.06.2003. On 03.02.2004, this Court admitted the appeal and formulated the following substantial questions of law:-

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in confirming the addition of Rs.34.25 lakhs not received by the appellant as the income of the appellant for the block period 1.4.1987 to 17.3.1997?
> 2. Whether on the facts and in the circumstances of the case, the Tribunal having accepted the fact that the sum of Rs.34.25 lakhs was not received by the appellant, is justified in holding that the said sum represents the appellant's income?"

2. The facts leading to the above substantial questions of law are as under:-

The assessee is a partnership firm engaged in the production of feature films. There was a search under Section 132 of the Income-tax Act ("Act" in short) in the business and residential premises of Shri.V.Natarajan, one of the partners of the assessee firm. The search resulted in seizure of several incriminating documents. Hence the Assessing Officer initiated proceedings under section 158BC r/w 158BD of the Act. In consequence to the same, the assessee filed a Return in Form No.2B admitting undisclosed income of the block period as 'NIL'. The Assessing Officer completed the assessment for the said block period and determined the total undisclosed income at Rs.1,07,15,000/-. While determining the undisclosed income, the Assessing Officer made an addition of Rs.34.25 lakhs. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals) ("CIT(A)" in short). The CIT(A) confirmed the addition made by the Assessing Officer and dismissed the appeal. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal confirmed the order of the CIT(A) and dismissed the appeal filed by the assessee. Hence the present tax case by the assessee.

3. Learned Senior Counsel appearing for the assessee submitted that the assessee produced a film by name "Love Birds" and the distribution rights of the film were given to M/s.GV Films for Rs.50 lakhs for Salem and TK areas and M/s.Nirmala Arts for Rs.60,01,000/-, respectively. With regard to M/s.GV Films, the assessee had received only Rs.30,00,000/- and the same was offered for regular assessment. The balance amount of

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Rs.20,00,000/- was not shown on the ground that the same was not accrued and also that the same is not paid till today. With regard to M/s.Nirmala Arts, the assessee had received only Rs.45,76,000/- and the same was offered for regular assessment. The balance amount of Rs.14.25 lakhs was not shown as it was not accrued. The reason for not receiving the balance amounts was that the said film was a flop. Hence the said balance amounts should not be considered as undisclosed income under Chapter XIVB of the Act. The question whether the balance amounts not shown for regular assessment could be considered in the block assessment or not, has not been considered and decided by the Tribunal. Hence the learned counsel appearing for the assessee requested the Court to give suitable direction to the Tribunal to reconsider the matter and pass orders in accordance with law.

4. Learned Senior Standing Counsel appearing for the Revenue submitted that the findings given by the authorities below are that the assessee had not disclosed the income which has been accrued, but for the search under Section 132 of the Act, the accrued income would not have been brought to tax. Hence, the authorities are right in making addition under Chapter XIVB of the Act.

5. Heard the counsel. The assessee produced the film by name "Love Birds" during the period relevant for the block assessment and the distribution rights of the film were given to M/s.GV Films and M/s.Nirmala Arts. The details

regarding the same are as under:-

"Name of the purchaser	Area	Agreement amount Rs.
1. M/s.GV Films	Salem	Rs.35 lakhs
2. M/s.GV Films	T K	Rs.15 lakhs
3. M/s.Nirmala Arts	Telugu rights	Rs.60,01,000/-"

There were written agreements between the parties and the assessee had not received the full amounts mentioned above on the ground that the film was a flop. Due to the same, the assessee was forced to waive a portion of the amount in respect of the above areas. The amount actually received from M/s.GV Films were Rs.25 lakhs for salem and Rs.5 lakhs for T K as against Rs.50 lakhs as per the agreement and hence the difference of Rs.20 lakhs was not received. Similarly from M/s.Nirmala Arts the amount of Rs.45,76,000/- was received as against Rs.60,01,000/- as per the agreement resulting in non-receipt of Rs.14,25,000/-. The Assessing Officer was of the view that the amounts not received, ought to have been shown as income on accrual basis. Hence the Assessing Officer treated the said sum of Rs.34.25 lakhs as undisclosed income for the block period. The reason for

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not showing the income was that, subsequently the assessee waived the above said difference amounts. In this case, originally the assessee filed regular Return on 31.10.1996 admitting a net loss of Rs.27,37,590/-. The accounts of the assessee also have been audited and the same was enclosed along with the said Return. The Return was processed under Section 143(1) of the Act. It has been specifically stated in the Assessment Order that during the year of account, the assessee had released, in January 1996, a Tamil Feature Film by name "Love Birds" for public exhibition. Later the assessment was reopened under Section 147 of the Act on the ground that certain income chargeable to tax has escaped assessment and notice under Section 148 of the Act was served on 29.09.2000. In response to the notice issued under Section 148 of the Act, the assessee also filed Return on 25.10.2000 admitting a loss of Rs.27,37,593/- as admitted earlier. In computing the loss, the amounts received from the above Distributors were taken into consideration and only the balance amounts were not offered on the ground that there was a waiver of the said amount of Rs.34.25 lakhs by mutual agreement and therefore, there was no accural of income. For the assessment year 1996-97, there was a regular assessment and later the assessment was reopened under Section 147 of the Act. There was a further appeal to the Appellate Authority and the said matter finally came up before this Court on a different issue. This Court dealt with the matter and the same is reported in [2007] 292 ITR 103 (Mad). In view of the same, the learned Senior Counsel appearing for the assessee argued that the said amount of Rs.34.25 lakhs should not be assessed as undisclosed income for the block period and it has to be assessed only in the regular assessment. Chapter XIVB deals with special procedure for assessment of search case. The special procedure for dealing with undisclosed income in a block of assessment in the form of a single assessment for more than a year was devised in Chapter XIVB. In this case the search was taken place on 17.03.1997. Much before the search, the assessee filed Return of income and also the same was processed under Section 143(1). Later it was reopened by the Revenue and reassessment was also completed on 24.04.2001. From the scheme of the provision it is clear that the block assessment and the regular assessment are for different purposes. The block assessment is for assessing the undisclosed income of the block period as a result of search and the regular assessment is for assessing the total income or loss of the previous year on the basis of the Return under Section 139 of the Act. Hence it is clear that Chapter XIVB of the Act relates to undisclosed income, and regular assessments made under the Act relate to the disclosed income of the same period. So, both regular assessment as well as block assessment would go on simultaneously. Hence there could be two parallel assessments, one for undisclosed income and another for any other income. In the present case, part of the amounts derived from the agreements were shown for regular assessment, and in respect of the balance amounts not received as per the agreements it was not shown and offered for assessment. Later, the block assessment was made in consequence of the search and while making the block assessment, the Assessing Officer noticed that the balance amount of Rs.34.25 lakhs

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was not offered for tax and hence he was of the view that it was an undisclosed income for the block period. No details were available on the record in respect of the same. The Tribunal which is the highest fact finding authority ought to have considered the same as to how the impugned amount could be considered as undisclosed income under Chapter XIVB of the Act, or not. Unfortunately, we lack the precious finding on the crucial factor related to answering the above questions of law. Without the precious finding, it is very difficult for this Court to determine the issue.

6. In view of the foregoing reasons, in the interest of justice, we set aside the order of the Tribunal with a direction to rehear the matter and consider the scope of Chapter XIVB as well as the impact of the regular assessment made by the Assessing Officer in the assessee's own case for the assessment year 1996-97, for the purpose of determining as to whether the said impugned amount would come under undisclosed income as contemplated under Chapter XIVB of the Act, or not, and pass orders in accordance with law, after giving opportunity to the assessee.

7. With the above observation, the tax case is disposed of. Consequently, T.C.M.P. No.148 of 2004 is closed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income-Tax Appellate Tribunal
   Rajaji Bhavan, III Floor,
   Besant Nagar, Chennai - 90.
2. The Commissioner of Income-tax (Appeals) VI,
   121, Mahatma Gandhi Road, Chennai-600 034.
3. The Deputy Commissioner of Income-tax,
   City Circle V(Inv)(2), Chennai-6.

1 cc To Mr.Pushya Sitaraman, Sr.Standing Counsel for I.T.Cases, SR.43622.
1 cc To M/s.Dr.Anita Sumanth, Advocate, SR.43562.

T.C.(A) No.47 of 2004

AKR(CO)
RVL 30.07.2007

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